

Sauer, John

From: Sur, Indraneel (CIV) <Indraneel.Sur@usdoj.gov>
Sent: Friday, October 14, 2022 1:55 PM
To: Sauer, John; Snow, Kyla (CIV); Kirschner, Adam (CIV); Cholera, Kuntal (CIV); 'Murrille@ag.Louisiana.Gov'; Capps, Kenneth; Talent, Michael
Cc: Jenin Younes; 'John Vecchione'; 'Jonathon Burns'; Megan Wold; 'Brian Barnes'
Subject: RE: 3:22-cv-01213-Missouri et al v. Biden - Requested Witnesses for Deposition

Good afternoon, counsel: On this question about the interrogatory verifications, we want to make sure that the remaining dispute concerns the verification as to Dr. Fauci. We disagree with your contention regarding the verification as to Dr. Fauci, as we have already discussed, and we will address the point further in our component of the joint statement.

Accordingly, we ask that you please confirm that the sole dispute on verifications concerns the one as to Dr. Fauci.

Sincerely,

* * *

Indraneel Sur
U.S. Dep't of Justice | Civil Division | Federal Programs Branch
DOJ mobile (202) 532-5748 | indraneel.sur@usdoj.gov

From: Sauer, John <John.Sauer@ago.mo.gov>
Sent: Friday, October 14, 2022 10:19 AM
To: Sur, Indraneel (CIV) <Indraneel.Sur@usdoj.gov>; Snow, Kyla (CIV) <Kyla.Snow@usdoj.gov>; Kirschner, Adam (CIV) <Adam.Kirschner@usdoj.gov>; Cholera, Kuntal (CIV) <Kuntal.Cholera@usdoj.gov>; 'Murrille@ag.Louisiana.Gov' <murrille@ag.louisiana.gov>; Capps, Kenneth <Kenneth.Capps@ago.mo.gov>; Talent, Michael <Michael.Talent@ago.mo.gov>
Cc: Jenin Younes <jenin.younes@ncla.legal>; 'John Vecchione' <john.vecchione@ncla.legal>; 'Jonathon Burns' <john@burns-law-firm.com>; Megan Wold <mwold@cooperkirk.com>; 'Brian Barnes' <BBarnes@cooperkirk.com>
Subject: [EXTERNAL] RE: 3:22-cv-01213-Missouri et al v. Biden - Requested Witnesses for Deposition

Indraneel-

Thank you for your response on the question of Dr. Fauci's failure to provide a verification under oath for his own interrogatory responses about his own personal communications with Mark Zuckerberg and other social-media platforms. We have reviewed your response and continue to believe that your position is meritless, and that Dr. Fauci is obligated to provide verification under oath on his own behalf. Your quotation of the Court's September 6 order, Doc. 72, omits the key directive on the bottom of page 7 that specifically states "**Dr. Fauci** shall provide answers to Plaintiffs' interrogatories ... within twenty-one (21) days from the date of this order." Doc. 72, at 7. The Court ordered "Dr. Fauci" to respond. Needless to say, "Dr. Jill Harper" is not mentioned in the Court's order. You contend that Dr. Fauci is responding solely in his capacity as NIAID Director, and that our interrogatories are functionally addressed to NIAID as a whole, not to Dr. Fauci individually. But our interrogatories plainly seek

information about communications Dr. Fauci was personally (and uniquely) involved in—as reflected by the 13 communications between Dr. Fauci and Mark Zuckerberg you identified on pages 52-54 of your Amended Interrogatory Responses, among other things. It is also evident from the fact that we served *separate* interrogatories on NIAID and Dr. Fauci. In short, both the Court’s order and our interrogatories themselves call for an attestation under oath of Dr. Fauci’s unique, personal knowledge about his own personal communications with social-media platforms. Dr. Jill Harper’s verification does not provide it. Please let us know by 3:00 pm Central today if you will reconsider your position and promptly provide Dr. Fauci’s own verification under oath.

Thanks, John

From: Sur, Indraneel (CIV) <Indraneel.Sur@usdoj.gov>

Sent: Tuesday, October 11, 2022 2:44 PM

To: Sauer, John <John.Sauer@ago.mo.gov>; Snow, Kyla (CIV) <Kyla.Snow@usdoj.gov>; Kirschner, Adam (CIV) <Adam.Kirschner@usdoj.gov>; Cholera, Kuntal (CIV) <Kuntal.Cholera@usdoj.gov>; 'Murrille@ag.Louisiana.Gov' <murrille@ag.louisiana.gov>; Capps, Kenneth <Kenneth.Capps@ago.mo.gov>; Talent, Michael <Michael.Talent@ago.mo.gov>

Cc: Jenin Younes <jenin.younes@ncla.legal>; 'John Vecchione' <john.vecchione@ncla.legal>; 'Jonathon Burns' <john@burns-law-firm.com>; Megan Wold <mwold@cooperkirk.com>; 'Brian Barnes' <BBarnes@cooperkirk.com>

Subject: RE: 3:22-cv-01213-Missouri et al v. Biden - Requested Witnesses for Deposition

Good afternoon, counsel: Thank you for the clarification of your views on this afternoon’s call. As to your remaining question about the verification of the September 27 responses:

For Ms. Jean-Pierre, the Court’s September 6 Order required responses, and Defendants provided those responses through the appropriate office, *i.e.*, the Office of the White House Press Secretary. We understand Plaintiffs to not contend that there is any substantive deficiency in those responses.

Similarly, as for Dr. Fauci, the Court’s September 6 Order provided that “[i]n responding to expedited discovery requests regarding Dr. Fauci, in his capacity as NIAID Director, Government Defendants shall provide responses to Plaintiffs’ expedited discovery requests by providing answers and responsive documents as to” the particular interrogatories at issue. ECF 72 at 6.

The direction to the Government Defendants implicates Dr. Fauci’s status as a defendant sued, in this action for injunctive relief against official conduct, in his official capacity at the head of NIAID. Given that “[o]fficial-capacity suits . . . generally represent only another way of pleading an action against an entity of which an officer is an agent,” *see Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985), the interrogatories are properly understood as calling for a response from NIAID, and for verification of that response by appropriate NIAID personnel. *See Shepherd v. Am. Broadcasting Cos.*, 62 F.3d 1469, 1481 (D.C. Cir. 1995) (agent of responding entity’s verification may be “accomplish[ed] . . . through whatever internal process the [entity] has chosen”); *cf. Carswell v. Camp*, 37 F.4th 1062, 1068 (5th Cir. 2022) (rejecting effort to “elide . . . differences” between official capacity claims and other claims). In any event, Defendants made clear in the amended responses that they were based on consultation with Dr. Fauci. And, again, we understand Plaintiffs to not contend that there is any substantive deficiency in those amended responses.

We hope that explanation resolves your question about the verifications. If not, may I ask if you would let us know the authorities on which your views are based?

Sincerely,

* * *

Indraneel Sur
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DOJ mobile (202) 532-5748 | indraneel.sur@usdoj.gov

From: Sauer, John <John.Sauer@ago.mo.gov>
Sent: Sunday, October 9, 2022 7:38 AM
To: Snow, Kyla (CIV) <Kyla.Snow@usdoj.gov>; Kirschner, Adam (CIV) <Adam.Kirschner@usdoj.gov>; Cholera, Kuntal (CIV) <Kuntal.Cholera@usdoj.gov>; 'Murrille@ag.Louisiana.Gov' <murrille@ag.louisiana.gov>; Capps, Kenneth <Kenneth.Capps@ago.mo.gov>; Talent, Michael <Michael.Talent@ago.mo.gov>
Cc: Sur, Indraneel (CIV) <Indraneel.Sur@usdoj.gov>; Jenin Younes <jenin.younes@ncla.legal>; 'John Vecchione' <john.vecchione@ncla.legal>; 'Jonathon Burns' <john@burns-law-firm.com>; Megan Wold <mwold@cooperkirk.com>; 'Brian Barnes' <BBarnes@cooperkirk.com>
Subject: [EXTERNAL] RE: 3:22-cv-01213-Missouri et al v. Biden - Requested Witnesses for Deposition

Kyla – Tuesday at 1:30 Eastern/12:30 Central will work for us. We'll send a WebEx invite.

Thanks, John

From: Snow, Kyla (CIV) <Kyla.Snow@usdoj.gov>
Sent: Saturday, October 8, 2022 4:07 PM
To: Sauer, John <John.Sauer@ago.mo.gov>; Kirschner, Adam (CIV) <Adam.Kirschner@usdoj.gov>; Cholera, Kuntal (CIV) <Kuntal.Cholera@usdoj.gov>; 'Murrille@ag.Louisiana.Gov' <murrille@ag.louisiana.gov>; Capps, Kenneth <Kenneth.Capps@ago.mo.gov>; Talent, Michael <Michael.Talent@ago.mo.gov>
Cc: Sur, Indraneel (CIV) <Indraneel.Sur@usdoj.gov>; Jenin Younes <jenin.younes@ncla.legal>; 'John Vecchione' <john.vecchione@ncla.legal>; 'Jonathon Burns' <john@burns-law-firm.com>; Megan Wold <mwold@cooperkirk.com>; 'Brian Barnes' <BBarnes@cooperkirk.com>
Subject: RE: 3:22-cv-01213-Missouri et al v. Biden - Requested Witnesses for Deposition

John,

We're available for an initial meet and confer on Tuesday at 1:30 pm ET. I'll note that we have a hard stop at 3 pm, although I don't necessarily anticipate the meet and confer going that long. Please let us know if 1:30 pm ET works for you.

Best,
Kyla

From: Sauer, John <John.Sauer@ago.mo.gov>
Sent: Friday, October 7, 2022 4:20 PM
To: Kirschner, Adam (CIV) <Adam.Kirschner@usdoj.gov>; Cholera, Kuntal (CIV) <Kuntal.Cholera@usdoj.gov>; 'Murrille@ag.Louisiana.Gov' <murrille@ag.louisiana.gov>; Capps, Kenneth <Kenneth.Capps@ago.mo.gov>; Talent, Michael <Michael.Talent@ago.mo.gov>
Cc: Snow, Kyla (CIV) <Kyla.Snow@usdoj.gov>; Sur, Indraneel (CIV) <Indraneel.Sur@usdoj.gov>; Jenin Younes

<jenin.younes@ncla.legal>; 'John Vecchione' <john.vecchione@ncla.legal>; 'Jonathon Burns' <john@burns-law-firm.com>; Megan Wold <mwold@cooperkirk.com>; 'Brian Barnes' <BBarnes@cooperkirk.com>

Subject: [EXTERNAL] 3:22-cv-01213-Missouri et al v. Biden - Requested Witnesses for Deposition

Dear Counsel-

Pursuant to Paragraph C(5) the Court's order authorizing expedited discovery, Doc. 34, "[w]ithin ten days after the production of any objected-to responses [i.e., today], Plaintiff States shall notify Government Defendants of any depositions the Plaintiff States wish to take." We have identified the following list of witnesses whose depositions we would like to take:

Jennifer Psaki
Anthony Fauci
Andrew Slavitt
Rob Flaherty
Laura Dehmlow
Elvis Chan
Vivek Murthy
Carol Crawford
Jay Dempsey
Eric Waldo
Max Lesko
Rob Silvers
Jen Easterly
Nina Jankowicz
Lauren Protentis
Matthew Masterson
Jennifer Shopkorn
Zachary Henry Schwartz
Samaruddin K. Stewart
Daniel Kimmage

Pursuant to Paragraph C(6), we are to meet and confer about these depositions over the next seven days, and if agreement is not reached, we are to submit a joint statement to the Court about our positions on any agreement about the depositions. We propose planning to have conferences to discuss our request at least twice next week, with an initial conference on Tuesday afternoon, Oct. 11. Please let us know your availability to meet and confer on that date.

Thanks,

John Sauer

From: Sauer, John

Sent: Friday, October 7, 2022 5:14 AM

To: 'Kirschner, Adam (CIV)' <Adam.Kirschner@usdoj.gov>; Cholera, Kuntal (CIV) <Kuntal.Cholera@usdoj.gov>; Murrille@ag.Louisiana.Gov; Capps, Kenneth <Kenneth.Capps@ago.mo.gov>; Talent, Michael <Michael.Talent@ago.mo.gov>

Cc: Snow, Kyla (CIV) <Kyla.Snow@usdoj.gov>; Sur, Indraneel (CIV) <Indraneel.Sur@usdoj.gov>

Subject: RE: 3:22-cv-01213-Missouri et al v. Biden

Dear Counsel-

Attached please find a PDF courtesy copy of the Second Amended Complaint and Exhibits P and Q that we filed last night. As you will see, the Second Amended Complaint adds several new defendants, who are also listed below. They are all federal agencies and/or federal officials sued in their official capacity. As with the First Amended Complaint, please let us know if you will accept this email as electronic service of the Second Amended Complaint on behalf of the new defendants.

Thanks, John

SAC – New Defendants:

ANDREW SLAVITT, in his official capacity as White House Senior COVID-19 Advisor,

ROB FLAHERTY, in his official capacity as Deputy Assistant to the President and Director of Digital Strategy at the White House,

COURTNEY ROWE, in her official capacity as White House Covid-19 Director of Strategic Communications and Engagement,

CLARKE HUMPHREY, in her official capacity as White House Digital Director for the Covid-19 Response Team,

BENJAMIN WAKANA, in his official capacity as the Deputy Director of Strategic Communications and Engagement at the White House COVID-19 Response Team,

SUBHAN CHEEMA, in his official capacity as Deputy Director for Strategic Communications and External Engagement for the White House Covid-19 Response Team,

DORI SALCIDO, in her official capacity as White House Covid-19 Director of Strategic Communications and Engagement,

TIMOTHY W. MANNING, in his official capacity as White House Covid-19 Supply Coordinator,

DANA REMUS, in her official capacity as Counsel to the President,

AISHA SHAH, in her official capacity as White House Partnerships Manager,

LAURA ROSENBERGER, in her official capacity as Special Assistant to the President,

MINA HSIANG, in her official capacity as Administrator of the U.S. Digital Service within the Office of Management and Budget in the Executive Office of the President,

U.S. DEPARTMENT OF JUSTICE,

FEDERAL BUREAU OF INVESTIGATION,

LAURA DEHMLow, in her official capacity as Section Chief for the FBI's Foreign Influence Task Force,

ELVIS M. CHAN, in his official capacity as Supervisory Special Agent of Squad CY-1 in the San Francisco Division of the Federal Bureau of Investigation,

JAY DEMPSEY, in his official capacity as Social Media Team Lead, Digital Media Branch, Division of Public Affairs at the CDC,

KATE GALATAS, in her official capacity as Deputy Communications Director at the CDC,

ERIC WALDO, in his official capacity as Chief Engagement Officer for the Surgeon General,

YOLANDA BYRD, in her official capacity as a member of the Digital Engagement Team at HHS,

CHRISTY CHOI, in her official capacity as Deputy Director, Office of Communications, HRSA within HHS,

TERICKA LAMBERT, in her official capacity as Director of Digital Engagement at HHS and Deputy Director of the Office of Digital Strategy at the White House,

JOSHUA PECK, in his official capacity as Deputy Assistant Secretary for Public Engagement at HHS,

JANELL MUHAMMED, in her official capacity as Deputy Digital Director at HHS,

MATTHEW MASTERSON, in his official capacity as Senior Cybersecurity Advisory within CISA in the Department of Homeland Security,

LAUREN PROTENTIS, in her official capacity as an official of CISA,

GEOFFREY HALE, in his official capacity as an official of CISA,

ALLISON SNELL, in her official capacity as an official of CISA,

KIM WYMAN, in her official capacity as CISA's Senior Election Security Lead,

BRIAN SCULLY, in his official capacity as an official of DHS and CISA,

ZACHARY HENRY SCHWARTZ, in his official capacity as Division Chief for the Communications Directorate at the U.S. Census Bureau,

LORENA MOLINA-IRIZARRY, in her official capacity as an official of the Census Bureau,

KRISTIN GALEMORE, in her official capacity as Deputy Director of the Office of Faith Based and Neighborhood Partnerships at the Census Bureau,

U.S. FOOD AND DRUG ADMINISTRATION,

ERICA JEFFERSON, in her official capacity as Associate Commissioner for External Affairs within the Office of the Commissioner at the U.S. Food and Drug Administration,

MICHAEL MURRAY, in his official capacity as Acquisition Strategy Program Manager for the Office of Health Communications and Education at the FDA,

BRAD KIMBERLY, in his official capacity as Director of Social Media at the FDA,

U.S. DEPARTMENT OF STATE,

LEAH BRAY, in her official capacity as Acting Coordinator of the State Department's Global Engagement Center,

SAMARUDDIN K. STEWART, in his official capacity as Senior Technical Advisor and/or Senior Advisor for the Global Engagement Center of the State Department,

DANIEL KIMMAGE, in his official capacity as Acting Coordinator for the Global Engagement Center at the State Department,

ALEXIS FRISBIE, in her official capacity as a member of the Technology Engagement Team at the Global Engagement Center at the State Department,

U.S. DEPARTMENT OF TREASURY,

WALLY ADEYEMO, in his official capacity as Deputy Secretary of the Treasury,

U.S. ELECTION ASSISTANCE COMMISSION,

MARK A. ROBBINS, in his official capacity as Interim Executive Director of the EAC, and

KRISTEN MUTHIG, in her official capacity as Director of Communications for the EAC

From: Kirschner, Adam (CIV) <Adam.Kirschner@usdoj.gov>

Sent: Tuesday, September 27, 2022 5:54 PM

To: Cholera, Kuntal (CIV) <Kuntal.Cholera@usdoj.gov>; Sauer, John <John.Sauer@ago.mo.gov>;
Murrille@ag.Louisiana.Gov; Capps, Kenneth <Kenneth.Capps@ago.mo.gov>; Talent, Michael
<Michael.Talent@ago.mo.gov>

Cc: Snow, Kyla (CIV) <Kyla.Snow@usdoj.gov>; Sur, Indraneel (CIV) <Indraneel.Sur@usdoj.gov>

Subject: RE: 3:22-cv-01213-Missouri et al v. Biden

Counsel,

A production has been posted on JEFS for your download. In addition, please find attached six documents: (a) four amended discovery responses; and (b) two organizational charts that we plan on bates stamping at a later date.

I will follow-up with another email that does not contain the attachments asking you to confirm receipt of the six documents.

Thank you,

Adam Kirschner

Senior Trial Counsel
United States Department of Justice
Civil Division, Federal Programs Branch
Washington, DC 20530
Phone: (202) 598-3846
Adam.Kirschner@usdoj.gov

From: Cholera, Kuntal (CIV) <Kuntal.Cholera@usdoj.gov>

Sent: Wednesday, August 17, 2022 9:17 PM

To: Sauer, John <John.Sauer@ago.mo.gov>; Murrille@ag.Louisiana.Gov; Capps, Kenneth
<Kenneth.Capps@ago.mo.gov>; Talent, Michael <Michael.Talent@ago.mo.gov>

Cc: Snow, Kyla (CIV) <Kyla.Snow@usdoj.gov>; Sur, Indraneel (CIV) <Indraneel.Sur@usdoj.gov>; Kirschner, Adam (CIV)
<Adam.Kirschner@usdoj.gov>

Subject: 3:22-cv-01213-Missouri et al v. Biden

Counsel,

Today, the contact you identified for us (Jeff Johnson) should be able to access our first production—containing over a thousand communications and documents, which we expect will represent a majority of the documents Defendants will produce—in response to Plaintiffs’ Requests for the Production of Documents.

Further, attached are our Responses and Objections to Plaintiffs’ Requests for the Production of Documents and Plaintiffs’ Interrogatories. As noted in our Responses and Objections to Plaintiffs’ Requests for the Production of Documents, Defendants intend to make rolling productions as additional documents become ready for production.

Let us know, of course, if there are any technical issues with tonight’s production.

Thank you,
Kuntal, Indraneel, and Kyla

Kuntal Cholera
Trial Attorney, Federal Programs Branch
U.S. Department of Justice
202.305.8645

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